

### **REMARKS**

Applicant notes with appreciation the well-reasoned Office Action mailed July 13, 2005. This amendment is submitted to be fully responsive to the outstanding Office Action of Paper No. 20050709. With this amendment claims 1 and 6 have been amended. Claims 2 and 4 have been canceled, and new claims 7-12 added. Support for these amendments is found in the as-filed claims and page 4, lines 12-15. As such, it is submitted that no new matter has been added.

Currently, claims 1, 4, 5 and 6 are rejected under 35 U.S.C. §102(b) as being anticipated by Chiueh (U.S. Patent 6,302,364). Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Chiueh in view of Grim (U.S. Patent 4,999,932) and further in view of Hull (U.S. Patent 5,049,102).

#### **Remarks Directed Towards Claim Objections**

Claim 2 has been canceled and its subject matter integrated into claim 1. Claim 2 was objected to the grounds that the word “median”, which appears on line 2, should read “medium” and amended claim 1 reads accordingly. As such, this objection is now believed to have been overcome.

#### **Remarks Directed to Rejections of Claims 1, 5 and 6 under 35 U.S.C. §102(b) over Chiueh**

As amended independent claims 1 and 6 and new independent claim 7 include subject matter not disclosed in Chiueh, Applicant submits that these claims and those that depend therefrom are no longer anticipated by Chiueh. Claim 1 now includes the limitation of “bleeding over inflation pressurizing medium from said bladder upon reaching a preselected pressure.” Claims 6 and 7 recite the limitation of manual inflation with a bellows. As Chiueh has been indicated to lack these limitations (Paper No. 20050709), the pending claims are submitted to not be anticipated by Chiueh.

In light of the above amendments and remarks, reconsideration and withdrawal of the rejection as to claims 1, 5 and 6 under 35 U.S.C. §102(b) over Chiueh is solicited.

**Remarks Directed to Rejection under  
35 U.S.C. § 103(a) over Chiueh in View of Grim**

Chiueh is cited as not teaching releasing the pressurizing medium upon reaching a certain pressure. Grim is cited to bolster Chiueh by teaching “an inflatable bladder with a relief valve. It would have been obvious to employ the relief valve of Grim in the device of Chiueh to prevent over pressure in the bladder ....” (Paper No. 20050709, page 3, first paragraph). It is respectfully submitted that combining the relief valve of Grim with the device of Chiueh does not actually yield the invention claimed in the application.

The relief valve of Grim teaches the continuous slow release of a pressurizing medium upon an air bladder’s attainment of maximum pressure (column 3, lines 38-45). This feature, as well as the alternative embodiment of a series of small holes in the bladder, allows the continuous pressurizing medium to bleed. This function is inconsistent with the preamble of claims 1 and 7 of “securing a beverage container.” To secure a container within the cup holder, the pressurizing medium cannot be allowed to bleed slowly over time without risking spillage of the container contents. As such, combining for argument’s sake Chiueh and Grim yields a device that upon being pressurized to retain a beverage container immediately begins to bleed pressure and preclude securement. Additionally, bumping of the cup holder lessens unintended container release through bleeding at the time securement is most needed. In light of the above remarks, reconsideration and withdrawal of the rejection of the pending claims under 35 U.S.C. §103(a) over Chiueh in view of Grim is solicited.

**Remarks Directed to Rejection under  
35 U.S.C. §103(a) over Chiueh in View of Hull**

Chiueh is cited as teaching “using a pump but does not specifically teach a bellows type pump. Hull teaches inflating a device with a bellows pump. It would have been obvious to employ a bellows pump in the device of Chiueh to rapidly inflate the bladder.” (Paper No. 20050709, page 3, paragraph 2). Reconsideration of the rejection is requested on the grounds that the combination of references utilizes a non-analogous prior art reference.

In *In re Clay*, Clay’s invention was a gel to raise purified hydrocarbons above a dead space in its storage container to the outlet valve. 966 F.2d 656 (Fed. Cir. 1992), The Board of Patent Appeals and Interferences found that the gel was analogous prior art and obvious in light of two other inventions: Hetherington, who displaced dead volume with inflatable bags, and Sydansk, who used a gel similar to Clay’s to get crude oil out of the earth. The Federal Circuit applied the following test:

whether prior art is analogous depends upon 1) whether the art is from the same field of endeavor, regardless of problem addressed, and 2) if the reference is not within the field of the inventor’s endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

*In re Clay* at 658-659. The Federal Circuit reasoned that Clay and Sydansk were not in the same field because the former dealt with hydrocarbon storage, whereas the latter dealt with crude petroleum extraction. The Court further found that one “having ordinary skill in the art would not reasonably have expected to solve the problem of dead volume in tanks for storing refined petroleum by considering a reference dealing with plugging underground formation anomalies.” *In re Clay* at 660. Since Sydansk was non-analogous prior art, the rejection of Hetherington in view of Sydansk could not be sustained.

With respect to the first prong of the analogous prior art test, the Hull reference teaches the inflation of a tote bag into a floating recreational raft whereas the Applicant teaches the inflation of bladders to secure a container within a container holder. The Federal Circuit observed in *In re Clay* that the applicant's and the reference's fields of endeavor could not be considered the same merely because both were involved in the petroleum industry. A similar conclusion is likely in the present matter where the prior art reference's field of endeavor is a "recreational raft apparatus" (Hull, column 1, line 1) while the Applicant's is an "inflatable vehicle cup holder" (invention title, page 1, line 1). The Applicant and prior art reference are not within the same industry and, consistent with *In re Clay*, cannot be considered within the same field of endeavor.


With respect to the second prong of the analogous prior art test, it is respectfully submitted that the Hull reference and the application address different problems. The Hull reference teaches a tote bag which may be inflated into a floatable toy upon operation of a pump, while the application teaches the formation of a stabilizing ring of air bladders upon the operation of a pump. If, as the Federal Circuit maintained in *In re Clay*, one of ordinary skill in the art would not have consulted a reference on plugging underground anomalies to address the problem of retrieving stored petroleum from a tank's dead space, then it appears less likely that a person of ordinary skill in the art would have considered a prior art reference teaching the use of a pump to inflate a raft to overcome difficulties in developing a pump-operated inflatable vehicle cup holder. Consequently, reconsideration of the claim rejections based upon the combination of the Chiueh and Hull references under 35 U.S.C. §103(a) is respectfully requested on the grounds that the Hull reference and the application are non-analogous arts.

An alternative basis for the withdrawal of the rejection lies in there being no motivation to combine the Chiueh and Hull references. The Chiueh invention describes a "pneumatic container holder" while the Hull reference defines a "recreational raft apparatus". Evidence for a motive to combine the Hull and Chiueh references is lacking considering Chiueh might have employed a bellows type pump in his invention, as Hull described, but chose not to do so. In fact Chiueh teaches away from such a "pneumatically operated means" (column 1, lines 30-36) and instead is explicit in requiring a mechanical pump mechanism. In light of the absence of any motivation to combine the Chiueh and Hull references, reconsideration and withdrawal of the claim rejection under 35 U.S.C. §103(a) over Chiueh in view of Hull is solicited.

**Summary**

Claims 1, 3 and 5-12 are pending in the application. Reconsideration and allowance of the claims is solicited. Should the Examiner find to the contrary, he is invited to contact the undersigned attorney in charge of the application to resolve any remaining issues.

Respectfully submitted,

  
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